



February 22, 2008

Donald I. Gurney, Sr.  
Gurney Brothers Construction, Inc.  
8 Gurney Road  
North Springfield, VT 05150

Re: Jurisdictional Opinion #2-251  
Act 250 Permit #2S0314-1 (Gurney Brothers Construction), Springfield

Hello Mr. Gurney:

This opinion is in response to your request to clarify emergency road repair in Permit Condition 8. It is my opinion that use of the pit for emergency road situations, including weather events resulting in dangerous road conditions, falls within the exception to the hours of operation in Permit Condition 8. This use is not a material change to the permitted project and will not require an amendment.

The information I have relied on includes the following:

1. Land Use Permit #2S0314-1 (the permit) was issued on June 07, 1996, to Gurney Brothers Construction, Inc. and authorized the permittee to operate a gravel extraction project with an extraction rate of up to 75,000 cubic yards per year.
2. Condition 8 of the permit required that the hours of operation were to be between 7:00 a.m. and 6:00 p.m., Monday through Friday. These hours may be exceeded only by amendment to this permit or to meet temporary emergency road repair needs.
3. An April 2, 1996, memorandum from the District 2 Environmental Commission stated that the operation of the pit outside the permitted hours of operation would only be permissible for emergency situations such as an immediate need to repair flood damage. "Emergency situations" was not limited to an immediate need to repair flood damage, but that was the only situation given as an example.
4. Exhibit 6 of the permit is an April 7, 1996, letter to the District 2 Environmental Commission from Gurney Brothers Construction, Inc., which describes other emergency situations which would require use of the pit outside the permitted hours of operation such as rain, sleet, snow and ice events.

5. You plan to continue use of the pit to meet the Town of Springfield's, its businesses' as well as the Town of Baltimore and its businesses' emergency road work needs following weather events resulting in dangerous road conditions under the emergency road repair exception of Permit Condition 8.

#### Statute and Rules

1. "Material change" means any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit and which may result in an impact with respect to any of the criteria specified in 19 V.S.A. § 6086(a)(1) through (a)(10). Act 250 Rule 2(C)(6).

You are proposing to continue to extract winter sand out of the pit for sanding operation for weather events resulting in dangerous road conditions which at times may necessitate working outside the hours of operation of the permit. This activity is not a material change as the activity is allowed under the exception of Condition 8. This activity is to meet temporary emergency road repair needs, and therefore, complies with the permit's condition. It should be noted that emergencies do not include every day occurrences, but rather they are unexpected situations or sudden occurrences of a serious and urgent nature that demands immediate action.<sup>1</sup>

#### Conclusion:

It is my opinion that use of the pit for emergency road conditions during hours that fall outside the hours of operation of Permit Condition 8, but within the exception of that condition is not a material change to the permitted project, therefore, a permit is not required.

Act 250 jurisdiction remains attached to the property and other proposed changes may require an amendment to the permit.

Do not hesitate to call me at 802-885-8842 if you have questions.

Sincerely,

Boolie Sluka /s/

Boolie Sluka  
Assistant District 2 Coordinator

cc: see certificate of service

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<sup>1</sup>See The American Heritage Dictionary, Second College Edition, definition of "emergency."

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3.

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Drawer 20, Montpelier, VT 05620-3201, in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The Environmental Court mailing address is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

